IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SHOW CAUSE NOTICE NO. 494 OF 2004
ALONGWITH
SHOW CAUSE NOTICE NO. 724 OF 2004
IN
CONTEMPT PETITION NO. 22 OF 2004
IN
NOTICE OF MOTION NO. 2462 OF 2002
IN
SUIT NO. 2976 OF 2002

NAIK BROTHERS DRYFISH PVT.LTD.&ORS. ...PETITIONERS.

VS.

UNION OF INDIA AND ORS. ...RESPONDENTS.

MR. V.A.GANGAL WITH KEDAR DIGHE FOR THE PETITIONERS.
MR. UMESH SHETRTY WITH MR. A.D.JAGADE I/B. MULLA AND MULLA FOR RESPONDENT NOS. 2 TO 11.
MR. UDAY P. WARUNJIKAR FOR RESPONDENT NOS. 12 TO 22.

Coram : S.K.Shah, J.
Date : February 10, 2006.

P.C.

1. Heard the learned Counsel on both sides.

2. By this Petition, the Petitioner alleges that the Respondent Nos. 2 to 11 were the office bearers of the Port Trust and the Respondent Nos. 12 to 22 were concerned with the Respondent NO. 19, an Association, had committed contempt of the Order passed by this Court on 16th September, 2003. By that Order, the Petitioners were granted relief in terms of prayer clause (b), except the bracketed portion in red ink. That was ad interim Order. Subsequently, it was confirmed on 1st October, 2003 including the bracketed portion. The prayer clause (b) of the said Order is as under :-

> "(b) That pending the hearing and final disposal of this Suit, the Defendants Nos. 12 to 22 their agents and servants be restrained by an Order of injunction of this Hon'ble Court from removing and/or transporting fish waste, seafood waste etc. containing prawn heads, prawns shells, fish heads, bones, viscera of fish etc. from the premises of Sasson Dock at Colaba, Mumbai including from the dust bin therein and its surroundings."

3. It is alleged by the Petitioner that the Respondent NO.12 to 22 have been removing all the fish waste as specified in prayer clause (b) and are not allowing the Petitioners to remove the same - as per the Contract with the Port Trust. The Petitioners further alleged that the Respondent Nos. 2 to 11, the Office Bearers of the Bombay Port Trust are also helping by their negative action of not obstructing the Respondent Nos. 12 to 22 from removing all the fish waste material, as specified in the prayer clause (b).

4. While admitting the petition, show cause Notice No. 494 was issued against the Respondents, they have filed reply. In reply the contention of the Respondent Nos. 2 to 12 is, in short, that the Respondent No. 19 Association was having a contract of cleaning and processing of the Seafood in Sassoon Dock area and delivering the same by their members and by virtue of the said contract, they cannot prevent the Respondent Nos. 12 to 22 from doing the same. The Reply of Respondent Nos. 12 to 22 is that they have been carrying on processing of the Sea Food. They further contend that earlier, the waste like prawn heads, prawns shells, fish heads, bones, viscera etc. were cleaned in the Dock itself and they were thrown in the dustbins as it was considered to be the waste material. However, subsequently, the same was fetching price and even after cleaning the fish, all these materials were carried away by them and they are earning by selling the said waste material. While taking this contention, they also have given an unconditional apology in the affidavit filed by Respondent No. 14- Mr. Salim Dange, also the office bearer of the Respondent No. 19 Association.

5. It is a matter of fact that the Order of Interim Injunction has been obtained by the Petitioners in the aforesaid terms of prayer clause (b). However, it would be necessary to see what right the Petitioners had under the contract, which was awarded to them by the respondent Nos. 2 to 11. The tenders were invited by the tender notice No. CE.T.36/2001/6938, dated 18th December, 2003. The subject / heading of the tender was as under :-

> Removal and transporting of fish and other Seafood waste offals mixed with associated refuse etc. from Sassoon Dock, Colaba, during the period from 1.8.2001 to 31.7.2004.

6. The Petitioners had filled in the tender and got the contract. The terms of the contract, which are included in term No. 5 thereof is as under :-

> "5. The main object of the contract is to maintain a high degree of cleanliness at Sassoon Dock Colaba on day basis, works to be carried out comprises briefly as follows :-
>
> > <u>Removal of Fish and other Sea food waste etc.:-</u> Removal of fish and other sea food waste, off offals etc. dumped in or around the dustbins at Sassoon Dock in "PURPOSE BUILT CLOSED CONTAINER", motor lorries daily and regular intervals every day including loading and unloading and transporting the waste anywhere outside MSPT area, at his own risk provided no complaints/ nuisance is received. the contractor must ensure that one lorry alongwith required labour is always available and the location for continuous loading of the material and that another is provided before the first one starts overflowing."

. Reading of this term, would indicate that the main object of this term was for the purpose of maintenance of high degree of cleanliness at the Sassoon Dock and the work which was to be carried under this contract was of removal of fish and other sea food waste etc. dumped in or around the dustbins of Sassoon Dock. Therefore, under this contract, it is clear that whatever was Dumped in the Dock Premises of Sassoon Dock, was to be removed by the Petitioners. In other words, what was not dumped in the Sassoon Dock cannot be removed by the Petitioners, the Petitioners cannot claim any right to the undumped material.

7. It appears that previously in the cleaning operation that was carried out in the premises of the Dock was fish waste, which included prawn heads, prawns shells, fish heads, bones, viscera of fish etc., was thrown away in the precincts of the Dock and the person who was having the contract to clean the same, was removing the same. However, subsequently, it appears that these fish waste items were also getting price and, therefore, the Respondent NO. 19 started removing the same alongwith the fish after cleaning them. Thus, in short they were not dumping the fish waste in the premises of the Sassoon Dock. This is what the petitioners had taken objection to. Therefore, they have filed this Suit and the interim application.

8. However, to my mind, by virtue of the terms of the contract, clause NO. 5 of the contract, awarding contract to the Petitioner, the Petitioner was entitled to remove only the dumped fish waste or Seafood waste. Dumped waste, obviously means, which is thrown away in the bins and precincts of the Sassoon Dock. The purpose of the contract was to maintain high degree of cleanliness in the Sassoon Dock area. However, the prayer clause (b), as was granted by the Court was to that extent, specifying the different parts of the fish and also extending it to the entire area of Sassoon Dock. Therefore, strictly speaking the Respondent Nos. 12 to 22 could be said to have committed contempt by removing all these waste material from the premises of the Sassoon Dock.

9. It has to be noted that notice of motion filed by the Respondent NO. 19 for recalling the injunction Order has been pending. At any rate, under the aforesaid circumstances, I am inclined to accept unconditional apology tendered by Respondent No. 12 to 22. So afar as Respondent Nos. 2 to 11 are concerned, there could no contempt. The contempt petition, therefore, stands disposed of. The show cause notice No. 949 of 2004 issued against Respondent Nos. 2 to 11 stands discharged and disposed of accordingly.

10. In view of the matter, show cause No. 724 of 2004 issued against the Respondent Nos. 12 to 22 stands disposed of.

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[S.K.Shah , J.]